REPORTABLE

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **LPA NO. 2033 of 2006**

% **Date of Decision** : 31st May , 2007.

RAGHUKUL TILAK .... Appellant.
Through Mr. R.C. Malhotra, Advocate.

VERSUS

UOI & ANR .... Respondents.
Through Mr. Maninder Singh, Ms. Pratibha M. Singh & Mr. Gaurav Sharma, Advocates.

CORAM:

HON'BLE DR. JUSTICE MUKUNDAKAM SHARMA, CHIEF JUSTICE
HON'BLE MR.JUSTICE SANJIV KHANNA

1. Whether Reporters of local papers may be allowed to see the judgment?

2. To be referred to the Reporter or not ?

3. Whether the judgment should be reported in the Digest ?

SANJIV KHANNA, J:

1. Learned Single Judge while dismissing the writ petition filed by the appellant by the impugned judgment dated 29th September, 2006 has aptly pointed out the paradox faced by the Court while deciding the matter by describing the appellant as 'Eklavya' of

Mahabharat, who was equal in skill and prowess if not even better than legendary 'Arjuna'. On “merits” of the appellant there cannot be any doubt but the question raised is that of eligibility and whether the appellant meets the minimum eligibility criteria fixed for admission to MBBS course.

2. The appellant had appeared in common All-India Pre-Medical/Dental Entrance Examination held in the year 2006 and secured ranking of 1600 in the merit list of 2400 selected candidates under the 15% quota. The appellant would have been entitled to admission in a medical college on the basis of ranking secured. The appellant, who was otherwise eligible on merit for admission to a medical college, has been denied admission on account of eligibility criteria prescribed by the Medical Council of India. The said eligibility criteria was also specified in the bulletin issued by Central Board of Secondary Education in 2006, the relevant extract of which reads as under:-

> “(iii) **Qualifications and Qualifying examination Codes:**
>
> CODE : 01
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> The Higher/Senior Secondary Examination or the Indian School Certificate Examination which is equivalent to 10+2 Higher/ Senior Secondary Examination after a period of 12 years study,

the last two years of such study comprising Physics, Chemistry, Biology (which shall include practical tests in these subjects) and Mathematics or any other elective subject with English at a level not less than the core course for English as prescribed by the National Council of Educational Research and Training after introduction of the 10+2+3 educational structure as recommended by the National Committee on Education."

CODE : 02

XXXXX

CODE : 03

XXXXX

CODE : 04

XXXXX

CODE : 05

XXXXX

CODE : 06

Any other examination which in scope and standard is found to be equivalent to the Intermediate Science Examination of an Indian University/Board, taking Physics, Chemistry and Biology including practical tests in each of these subjects and English. Provided that to be eligible for competitive entrance examination, candidate must have passed any of the qualifying examinations as enumerated above. Provided also that to be eligible for competitive entrance examination the candidate must have passed in the subjects of Physics, Chemistry, Biology and English individually and must have

> obtained a minimum of 50% marks taken together in Physics, Chemistry and Biology at the qualifying examination. In respect of the candidates belonging to Scheduled Castes, Scheduled Tribes or Other Backward Classes the marks obtained in Physics, Chemistry and Biology taken together in qualifying examination be 40% instead of 50% for General Candidates.
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> Provided further that the students of Indian nationality educated abroad seeking admission into medical colleges in India must have passed in the subjects of Physics, Chemistry Biology and English upto the 12th Standard level with 50% marks and their equivalency determined as per regulations of the Medical Council of India and the concerned University. If a candidate does not fall within the qualifications prescribed as per Code number 01-06 he/she should furnish complete details to determine eligibility."

3. The appellant has not challenged and questioned the legality and vires of the Regulations or the eligibility criteria prescribed in Code 1 on the ground of discrimination, Article 14 etc. The appellant claims that he is eligible and is entitled to admission as he fulfills the eligibility criteria prescribed in Code 6. The case of Medical Council of India and the Union of India is that Code 1 applies to the case of the appellant and he does not meet the prescribed eligibility criteria fixed under the said Code. We may again reiterate that we are not examining whether Code 1 and the eligibility criteria fixed therein is bad or ultra vires, but the limited controversy before us is whether Code 1 or Code 6 will apply. In case Code 1 applies, the appellant is

not entitled to admission as will be clear from the said facts stated below and in case Code 6 applies, the appellant will be entitled to admission.

4. The appellant has passed class XII exam under the 10+2 scheme. The said exam was conducted by Board of Secondary Education, Rajasthan in the year 2002 with Physics, Chemistry, Mathematics as his elective subjects in addition to Hindi and English. Computer Science was an additional subject. This is clear from the certificate issued by the said Board. He did not study Biology for two years as a subject in class XI and XII. However, Rajasthan Board permits and allows students to appear in Biology examination of class XII as an optional subject in a supplementary examination after attending some classes of practicals spread over 60 periods, as per averments made in the appeal. After having cleared class XII with Physics, Chemistry and mathematics as elective subjects and Hindi and English as compulsory subjects, the appellant appeared in the Biology examination and has cleared the same. It is the case of the appellant that having cleared the Biology examination at the Senior Secondary level in class 10+2, he is entitled to admission and his case falls under Code 6. Central Board of Secondary Education supports the claim of the appellant but the Union of India and Medical

Council of India are opposing the present appeal.

5. Codes 1 and 6 have been quoted above. Code 1 is applicable to a student, who has cleared Senior Secondary Examination equivalent to 10+2. Code 6, on the other hand, applies to any other examination, which is not Senior Secondary Examination equal to 10+2 recommended by National Committee on Education. The exam cleared by the appellant in 2002 was Senior Secondary Examination under the 10+2 scheme conducted by Board of Secondary Education Rajasthan. Therefore, he will fall under Code 1 and not under Code 6. Code 6 only applies when a student has not cleared Senior Secondary Examination under the 10+2 scheme, but any other examination of scope and standard equivalent to Intermediate Science Examination of an Indian University/Board. Code 6 cannot apply in the present case as it is a residuary clause which applies when Code 1 or other codes do not apply. If Code 1 or Codes 2 to 5 apply, then Code 6 is not applicable. Possibly Code 6 would apply to School Leaving Examinations, which are conducted abroad and other cases where examinations are not conducted as per 10+2 pattern as prescribed. In the present case, the appellant had appeared in the XIIth class exam conducted by the Board of Secondary Education, Rajasthan under the 10+2+3 educational

structure as recommended by the National Committee on Education.

6. In view of the above, we have to hold that in the case of the appellant Code 1 applies and not Code 6. The appellant does not fulfill the eligibility criteria mentioned in Code 1, which requires that the student should have studied Biology in last two years before he gives the Senior Secondary Examination or Indian School Certificate Examination. Admittedly, the appellant has not studied Biology for two years and, therefore, does not meet the eligibility criteria. Merely passing Biology exam in class XII, does not satisfy the eligibility requirement of Code 1.

7. The learned Single Judge has also referred to several judgments of the Supreme Court in cases of ***State of Tamil Nadu and Another versus Adhiyaman Educational & Research Institute*** 1995 (4) SCC 104***, State of Kerala versus T.P. Roshana,*** (1979) 1 SCC 572***, Preeti Srivastava versus State of M.P.*** 1999 (7) SCC 120 and ***Sanjeev Gupta versus Union of India,*** 2005 (1) SCC 45 that criteria fixed for admission to technical education, where norms, standards and requirements are fixed by technical bodies having expertise, courts should not interfere and permit deviation and strict adherence to the standards and norms should be the norm and not an exception. However, we would like to state that certainty and clarity in fixing the

said standards and eligibility criteria cannot be over-emphasized. It is equally duty and obligation of all the statutory bodies and authorities to inform the students and their parents, when they select their subjects for class XI and XII. In the present case, Central Board of Secondary Education has taken a different stand on the eligibility criteria prescribed viz. than the stand taken by the Union of India and the Medical Council of India. This should not happen as these organisations/authorities are supposed to work in tandem and uniformly, otherwise career of several students can be marred and will suffer.

8. However, it may be stated that the stand of the Union of India and Medical Council of India is that Central Board of Secondary Education is only conducting examination on behalf of the Union of India and Medical Council of India. It was submitted that Central Board of Secondary Education cannot prescribe eligibility criteria and Medical Council of India being the statutory authority is entitled to prescribe eligibility criteria for admission to medical colleges and maintain standards of medical education. Reference in this regard was made to the case of ***Medical Council of India versus State of Karnataka and others*** reported in (1998) 6 SCC 131. It was, therefore, submitted that fixing of eligibility criteria is the exclusive

function of the Medical Council of India and the regulations framed by the said Council have statutory force. There is merit in the said submission.

9. Learned counsel for the appellant had also submitted that in the case of Dr. R.C. Dhaka and Mr. M.C. Kaushik, admission was given though the said persons had not studied Biology as an elective subject for two years at +2 stage. There seems to be some dispute about the factual position and whether the said two students had been granted admission under the 15% All-India quota. Even if it is presumed that the two persons mentioned above were granted admission under the All-India quota, we do not think that the appellant is entitled to relief and direction for admitting the appellant can be issued. A wrong done or a mistake made in other cases, would not justify a wrong direction by this Court to admit the appellant contrary to the eligibility criteria. Article 14, it is well recognised is positive in operation and ensures equality and abhors discrimination but the said Article does not permit multiplication of wrong decisions taken earlier. Courts correct wrongs and do not by applying Article 14 perpetuate and give a stamp of approval to illegal and wrong acts.

10. In view of the findings given above, we do not find any merit in the present appeal and the same is accordingly dismissed. In the

facts and circumstances of the case, there will be no order as to costs.

(SANJIV KHANNA)
JUDGE

(DR. MUKUNDAKAM SHARMA)
CHIEF JUSTICE

MAY 31, 2007.
VKR/P